

**CONTRACT DOCUMENTS**

**CITY OF LINCOLN  
NEBRASKA**

**PortaCount Pro+ Respirator Fit Tester (SEMRS)  
Bid No. 12-061**

**TSI Incorporated  
500 Cardigan Road  
Shoreview, MN 55126  
800.874.2811**

**CITY OF LINCOLN  
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and between **TSI Incorporated, 500 Cardigan Road, Shoreview, MN 55126**, hereinafter called "Contractor", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City".

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

For providing **PortaCount Pro+ Respirator Fit Tester (SEMRS), Bid No. 12-061** and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal/Supplier Response in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals/Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal/Supplier Responses, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the City has agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute and complete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

**Agreement to full proposal**

2. The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

**City will pay for products/service, according to the Line Item pricing as listed in Contractors Proposal/Supplier Response, a copy thereof being attached to and made a part of this Contract. The City shall order on an as needed basis for the duration of the contract.**

3. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
5. Termination. This Contract may be terminated by the following:
  - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
  - 5.2) Termination for Cause. The City may terminate the Contract for cause if the Contractor:
    - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
    - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
    - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
7. Contract Term. This Contract shall be effective upon execution by both parties. The term of the Contract shall be a three (3) year term.
8. The Contract Documents comprise the Contract, and consist of the following:
  1. Contract Agreement
  2. Accepted Proposal/Response
  3. Instructions to Bidders
  4. Sales Tax Exemption Form 13

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

**EXECUTION BY THE CITY OF LINCOLN, NEBRASKA**

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk \_\_\_\_\_

Mayor \_\_\_\_\_

Approved by Resolution No. \_\_\_\_\_

dated \_\_\_\_\_

**EXECUTION BY CONTRACTOR**

IF A CORPORATION:

ATTEST:

Secretary \_\_\_\_\_

(SEAL)

TSI Incorporated

Name of Corporation

600 Cardigan Road, Shoreview, MN 55126

(Address)

By: \_\_\_\_\_

Duly Authorized Official

Vice President Sales & Marketing

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Name of Organization \_\_\_\_\_

Type of Organization \_\_\_\_\_

(Address) \_\_\_\_\_

By: \_\_\_\_\_

Member

By: \_\_\_\_\_

Member

IF AN INDIVIDUAL:

Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

# City of Lincoln/Lancaster County (Lincoln Purchasing) Supplier Response

## Bid Information

Bid Creator Shelly Hinze, Buyer  
Email rhinze@lincoln.ne.gov  
Phone 1 (402) 441-8313  
Fax 1 (402) 441-6513  
  
Bid Number 12-061  
Title PortaCount Pro+ Respirator  
Fit Tester (SEMRS)  
Bid Type Bid  
Issue Date 02/17/2012  
Close Date 3/14/2012 12:00:00 PM CST  
Need by Date

## Contact Information

Address Purchasing  
440 S. 8th St.  
Lincoln, NE 68516  
Contact Shelly Hinze, Buyer  
Purchasing  
Department  
Building Suite 200  
Floor/Room  
Telephone (402) 441-8313  
Fax (402) 441-6513  
Email Rhinze@lincoln.ne.gov

## Ship to Information

Address Lincoln Lancaster  
County Health  
3140 N Street  
Lincoln, NE 68510  
Contact  
Department  
Building  
Floor/Room  
Telephone (402) 441-4676  
Fax  
Email

## Supplier Information

Company TSI Incorporated  
Address 500 Cardigan Road  
  
Shoreview, MN 55126  
Contact Long Yang  
Department  
Building  
Floor/Room  
Telephone 1 (800) 874-2811  
Fax 1 (651) 490-3824  
Email long.yang@tsi.com  
Submitted 2/17/2012 8:03:36 PM CST  
Total \$38,970.00

Signature



Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Page 2 - Attachments	Please note that there is a page 2 of Attachments that you must review as part of your bid.	Yes
2	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
3	Calibration & Cleaning Cost	List your yearly cost for calibration and cleaning.	\$2,465 for 3 years
4	On site training	List cost for on-site training.	Free of Charge
5	Special Provision Term Contract Provisions	I acknowledge reading and understanding the Special Provision Term Contract Provisions.	Yes
6	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
7	Contract renewal is an Option	Contract Extension Renewal is an option.	Yes
8	Term Clause of Contract	I acknowledge that the term of the contract is for a one (1) year term with the option for three (3) additional one (1) year renewals from the date of the executed contract.  (a) Are your bid prices firm for the first one (1) year contract period. YES or NO  (b) Are your bid prices subject to escalation/de-escalation YES or NO  (c) If (b), state period for which prices will remain firm: through _____	2012
9	Federal Bidding Documents and Compliance	I have read and understand the Federal Forms attached to this bid and hereby agree to comply with the provisions as they are listed in the forms.	Y
10	Protest Procedures	I acknowledge that I have read and understand the City of Lincoln Bid Protest procedures. I further recognize that in the event a protest is denied by the City, I may file a protest with the Federal Grant Provider after exhausting all administrative remedies with the City. For further information on a protest, a Vendor may contact the City Purchasing Agent.	Y
11	Warranty	Warranty	2 Years
12	Bid award	I acknowledge and understand that the City, County and/or Public Building Commission reserves the right to award bids item-by-item, with or without alternates/options, by groups, or "lump sum" such as shall best serve the requirements and interests of the City, County and/or Public Building Commission.   If your pricing is based on an all-or-nothing basis, please indicate so in the Supplier Notes section of your E-Bid response.	Yes
13	Delivery	State number of delivery days ARO. FOB to the City/County at the location specified with all transportation charges paid.	14
14	Contact	Name of person submitting this bid:	Long Yang
15	Electronic Signature	Please check here for your electronic signature.	Yes

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## Line Items

#	Qty	UOM	Description	Response
1	3	EA	PortaCount Pro+ Respirator Fit Tester   Fit factor range: 1 to greater than 10,00   Typical fit factor accuracy: ±10% of reading,  Power autosensing 100 to 250 VAC, 50 to 60Hz Flow rate sample 350cm3/min and total 1000cm3/min(nominal)   To include:   Carrying case, AC adapter with universal plug set, alcohol cartridge, alcohol fill capsule, storage cap, two zero check filter, Model 8016 alcohol supplies (16 bottles of Isopropyl alcohol 30ml size), 3/16 and 1/4" hose adapters, two spare alcohol wicks, 100 sampling probes, probe insertion tool, neck strap, Flash memory drive (1GB), USB cable, FitPlus Fit Test Software on CD, operation and service manual.	\$12,810.00

Manufacturer: TSI or Equivalent      Manufacturer #: 8038

Item Notes:

Supplier Notes:

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2	3	EA	Fit Test Sampling Probe Kit with instructions including:   Piercing tool  Push Nut tool  500 Probes 500 Push Nuts.	\$180.00
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Manufacturer: TSI or Equivalent      Manufacturer #: 8025-N95

Item Notes:

Supplier Notes:

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Response Total:	\$38,970.00
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TRUST. SCIENCE. INNOVATION.

**TSI Incorporated**

500 Cardigan Road, Shoreview, MN 55126 USA

tel 651 490 2811 toll free 800 874 2811 fax 651 490 3824 web [www.tsi.com](http://www.tsi.com)

**APPENDIX A – Test and Measurement Clean and Calibration Service -  
SERVICES TO BE PERFORMED**

**PRODUCTS COVERED UNDER THIS AGREEMENT INCLUDE THE FOLLOWING MODELS**

PortaCount Plus 8020 Respirator Fit Testers	AeroTrak 9000 Surface Area Monitors
PortaCount Plus 8028 Respirator Fit Testers	SidePak AM510 Aerosol Monitors
PortaCount Pro 8030 Respirator Fit Testers	Model 4146 Primary Calibrators
PortaCount Pro+ 8038 Respirator Fit Testers	Q-Trak 8550 IAQ Monitors
DustTrak 8520 Aerosol Monitors	Q-Trak 8551 IAQ Monitors
DustTrak II 8530 Aerosol Monitors	Q-Trak 8552 IAQ Monitors
DustTrak II 8531 Aerosol Monitors	Q-Trak 8554 IAQ Monitors
DustTrak II 8532 Aerosol Monitors	Q-Trak 7565 IAQ Monitors
DustTrak DRX 8533 Aerosol Monitors	P-Trak 8525 Ultrafine Particle Counters
DustTrak DRX 8534 Aerosol Monitors	

**RESPONSIBILITIES OF TSI**

**A. SCOPE**

TSI agrees to provide Clean and Calibration Service in accordance with this Calibration Contract while the hardware and software is operated in conformance with TSI's published specifications, subject to normal use.

**B. FACTORY CLEAN AND CALIBRATION SERVICE**

TSI will provide to the Customer Scheduled Clean and Calibration Service at factory-recommended intervals (not less than once every twelve months) during the term of this Service Agreement. Scheduled Clean and Calibration Service is defined as follows and includes the listed services:

1. Initial inspection testing and performance verification of Product.
2. Review of written instructions or explanation of problem from customer.
3. Factory Cleaning and Calibration, including:
  - i. Clean instrument
  - ii. Inspect and replace consumable components as necessary
  - iii. Leak check (if applicable)
  - iv. Calibrate instrument in accordance with TSI standard calibration procedures
    1. Zero Check (if applicable)
    2. Align Optics (if applicable)
    3. Span calibrate gas sensors (if applicable)
    4. Calibrate flow rates, voltages, and temperature control (if applicable)
  - v. Update manual, software and firmware as necessary
  - vi. Final electrical checkout and performance validation
  - vii. Provide Calibration Certificate indicating Product is fully functional and operates within factory specifications
4. Technical Support assistance to the Customer by telephone or e-mail during the term of this Calibration Contract.

**RESPONSIBILITIES OF THE CUSTOMER**

Throughout the term of this Calibration Contract, the Customer shall maintain the Product within TSI specifications, or in good working condition. The Customer must follow maintenance procedures as described in the Operations and Service Manual of the Product. Customers must disclose all hazardous materials used or exposed to the instrument and decontaminate all affected components prior to TSI servicing. Customer ensures that the instrument is in its original, unmodified configuration prior to TSI servicing. Customer is responsible for shipping product to TSI Authorized Service Center for Clean and Calibration Service.



**CITY OF LINCOLN**  
**45 CFR PART 92**  
**SECTION 92.36(i)(10)**  
**ACCESS TO RECORDS**

**Access to Records.** The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the grantee or a subgrantee in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the appropriate Federal agency access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the Recipient or a subgrantee of the Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser and the appropriate Federal agency access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the Recipient or a subgrantee of the Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the Recipient or a subgrantee of the Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**CITY OF LINCOLN**  
**45 CFR PART 92**  
**SECTION 92.36(i)(1)**  
**BREACHES AND DISPUTE RESOLUTION**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(12)  
CLEAN AIR ACT  
CLEAN WATER ACT**

**Clean Air**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

**Clean Water**

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

**CITY OF LINCOLN**  
**45 CFR PART 92**  
**SECTION 92.36(i)(6)**  
**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**Contract Work Hours and Safety Standards**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**CITY OF LINCOLN**  
**45 CFR PART 92**  
**SECTION 92.36(i)(9)**  
**COPYRIGHTS AND RIGHTS IN DATA**

**CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

**A. Rights in Data** - These following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance.

(c) When Federal assistance is awarded for experimental, developmental, or research work, the general intention is to increase knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit the Federal agency involved to make available to the public, either the Federal agency's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**CITY OF LINCOLN**  
**45 CFR PART 74**  
**APPENDIX A**

**Debarment and Suspension**

Awards that exceed the small purchase threshold fixed at 41 U.S.C. 403(11), are considered covered transactions for purposes of 45 CFR Part 74. As such, no contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Order No. 12549 and 12689, Debarment and Suspension. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order No. 12549.

Contractors with awards that exceed the small purchase threshold fixed at 41 U.S.C. 403(11), must provide the required certification regarding its exclusion status and that of its principal employees.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The signed and submitted bid or proposal contains material representations of fact relied upon by **City of Lincoln**. If it is later determined that the bidder or proposer knowingly rendered an erroneous representation of its debarment or suspension status, in addition to remedies available to **City of Lincoln**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 28 CFR 70. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.



**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(13)  
ENERGY POLICY AND CONSERVATION ACT**

Contractor will comply with mandatory standards and policies relating to energy efficiency which are contained in the Nebraska state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94- 163, 89 Stat. 871.) [53 FR 8078, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19645, Apr. 19, 1995].

**CITY OF LINCOLN**  
**45 CFR PART 92**  
**SECTION 92.36(i)(3)**  
**Executive Order 11246**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**Civil Rights, Equal Employment Opportunity** The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(8)  
PATENT RIGHTS**

**Patent Rights** - These following requirements apply to each contract involving experimental, developmental, or research work:

- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the necessary parties are notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(7)  
REPORTING REQUIREMENT AND REGULATIONS**

Contractor agrees to provide the City, upon request, full and complete reports and/or other information as to the Contractor's operations and conduct under the Contract.

**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(11)  
RETENTION OF RECORDS**

Contractor agrees to retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

**CITY OF LINCOLN  
45 CFR PART 74  
APPENDIX A  
37 CFR PART 401**

**Rights to Inventions Made Under a Contract or Agreement**

Contractor agrees to comply with 37 CFR Part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts or Cooperative Agreements, and any implementing regulations issued by City of Lincoln. This contract provides for the rights of the Federal Government and City of Lincoln with regard to the performance of experimental, developmental, or research work in any resulting invention as specified under 37 CFR Part 401.

**CITY OF LINCOLN  
45 CFR PART 92  
SECTION 92.36(i)(2)  
TERMINATION PROVISIONS**

**Termination.** This Contract may be terminated by the following:

**Termination for Convenience.** Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.

**Termination for Cause.** The City may terminate the Contractor for cause if the Contractor:

- 1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide the services outlined in the Contract
- 2) Disregards Federal, State or local laws, ordinances, regulations, resolution or orders
- 3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.

## **Bid Protests; Definitions; Appeals Board; Fees.**

### **Definitions.**

- (1) **Interested party** shall mean an actual or prospective bidder whose direct economic interest would be affected by the award of a contract by the City to another party, or by the failure of the City to award a contract to such actual or prospective bidder.
  - (2) **Protest** shall mean a written objection by an interested party on any phase of the bidding process, including specification preparation, bid solicitation, and intent to award, for the acquisition of supplies or services.
  - (3) **Protester** shall mean an interested party who has filed a protest pursuant to subsection (b).
  - (4) **Procurement Appeals Board** shall mean an independent panel of five disinterested individuals appointed by the Mayor, which individuals shall have a thorough knowledge of the purchasing process and practices, and laws applicable thereto. Members of such board shall be appointed for three-year, staggered terms; provided, however, two of the members first appointed shall serve for a period of one year, two shall serve for a period of two years, and one for a period of three years, with each appointee thereafter, except for appointees filling a vacancy, serving for a period of three years.
- (b) **Right to Protest.** An interested party may protest to the City Purchasing Agent, which protest shall be submitted in writing on company letterhead. Protests based on alleged apparent improprieties in a solicitation or other request for proposals must be filed before bid opening. In all other cases, the protest must be filed within five working days following the bid opening or if the protest is based on the selection of the lowest responsible bidder, not later than five working days following the selection of the lowest responsible bidder. To expedite handling of protests, the envelope containing the protest should be clearly labeled "Protest." The written protest shall include as a minimum the following:
- (1) The name and address of the interested party;
  - (2) Appropriate identification of the relevant solicitation, and if a bid has been opened, its number, and date of opening;
  - (3) A statement of reasons for the protest;
  - (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated. Upon timely receipt of a protest, the City shall not proceed further with the solicitation or with the award of the contract and shall suspend performance under the contract until the Mayor has made a decision on the protest.
- (c) **Authority to Resolve Protests.** Prior to the commencement of an appeal to the Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve any protest filed by an interested party concerning any solicitation. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days. The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of their right to the administrative review as provided by the Procurement Appeals Board. A copy of the decision shall be mailed or otherwise furnished immediately



to the protester and all other bidders. If not satisfied with the decision of the Purchasing Agent, any protester may appeal to the Procurement Appeals Board, but the decision shall be final unless the protester files a timely appeal with the Procurement Appeals Board.

- (d) Appeals Board Procedures. Any protester, within five working days of receipt of a decision of the Purchasing Agent, may file with the Finance Director a written notice of appeal for a hearing before the Procurement Appeals Board. The Notice of Appeal shall be accompanied by a deposit of \$500.00 to defray the cost of processing such appeal, which deposit shall be returned if the Mayor decides in favor of the protester filing the appeal. The Notice of Appeal must clearly state the action protested and the basis of appeal.

Upon receipt of an appeal from an protester, the Finance Director shall convene the Board within ten working days or as soon thereafter as reasonably possible to conduct an administrative review of the appeal. The Board shall decide whether the solicitation being appealed was in accordance with all applicable laws and regulations and the terms and conditions of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid, if any, were justified and in the best interest of the City.

Within ten working days of hearing such appeal, the Board shall submit its findings and recommendations to the Mayor. If all five members are present, an affirmative vote of three shall be required to pass the recommendation on to the Mayor. If only three members are present, only an affirmative vote of two shall be required to pass the recommendation on to the Mayor. Should it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the Mayor without Procurement Appeals Board action.

No determination by the Board concerning an issue of law or fact shall be final or binding on the City.

- (e) Finality of Decision. The Mayor shall consider the recommendations of the Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which the solicitation was made and shall make the final decision on the protest. The Mayor's decision shall be final and binding upon the City. (Ord. 18495 §1; January 31, 2005: prior Ord. 16442 §1; August 9, 1993).

# INSTRUCTIONS TO BIDDERS

## CITY OF LINCOLN, NEBRASKA

E-Bid

### 1. **BIDDING PROCEDURE**

- 1.1 Sealed bid, formal and informal, subject to Instructions and General Conditions and any special conditions set forth herein, will be received in the office of the Purchasing Division, 440 So. 8<sup>th</sup> St., Lincoln, NE 68508, until the bid closing date and time indicated for furnishing the City of Lincoln, hereinafter referred to as "City", the materials, supplies, equipment or services shown in the electronic bid request.
- 1.2 Bidders shall use the electronic bid system for submitting bids and must complete all required fields.
- 1.3 Identify the item you will furnish by brand or manufacturer's name and catalog numbers. Also furnish specifications and descriptive literature if not bidding the specific manufacturer or model as listed in the specifications.
- 1.4 Any person submitting a bid for a firm, corporation, or other organization must show evidence of his authority so as to bind such firm, corporation, or organization.
- 1.5 Bids received after the time and date established for receiving bids will be rejected.
- 1.6 The Bidders and public are invited, but not required, to attend the opening of bids. At the opening, prices will be displayed electronically and/or read aloud to the public. The pricing is also available for immediate viewing on-line. No decisions related to an award of a contract or purchase order will be made at the opening.
- 1.7 If bidding on a construction contract, the City's most current Standard Specifications for Municipal Construction shall apply.
  - 1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.
  - 1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.
  - 1.7.3 Said document is available on the web site.  
<http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm>

### 2. **BID SECURITY**

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bid bond, may be required to be submitted with this bidding document, as indicated on the bid.
  - 2.1.1 Bid security, if required, shall be in the amount specified on the bid. The bid security must be scanned and attached to the "Response Attachments" section of your response or it can be faxed to the Purchasing Division at 402-441-6513. The original bid security should then be sent or delivered to the office of the Purchasing Division, 440 S. 8<sup>th</sup> St., Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing.
  - 2.1.2 If bid security is not received in the office of the Purchasing Division as stated above, the vendor may be determined to be non-responsive.
- 2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful Bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful Bidder(s) as follows:
  - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
  - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of Bidders to whom an award is being considered until either:
  - 2.5.1 A contract has been executed and bonds have been furnished.
  - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
  - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this bidding document:
  - 2.6.1 If the Bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the Bidder fails to provide sufficient bonds or insurance within the time period as established in this bidding document.

### 3. **BIDDER'S REPRESENTATION**

- 3.1 Each Bidder by electronic signature and submitting a bid, represents that the Bidder has read and understands the bidding documents, and the bid has been made in accordance therewith.
- 3.2 Each Bidder for services further represents that the Bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bidding documents.

**4. CLARIFICATION OF BIDDING DOCUMENTS**

- 4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents.
- 4.2 Bidders desiring clarification or interpretation of the bidding documents for formal bids shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of formal bids.
- 4.3 Changes made to the bidding documents will be issued electronically via addendum. All vendors registered for that bid prior to bid issuance will be notified of the addendum. Bidders registering after the bid is issued will receive the bid with the addendum included.
- 4.4 Oral interpretations or changes to the bidding documents made in any manner other than written form will not be binding on the City; and Bidders shall not rely upon such interpretations or changes.

**5. ADDENDA**

- 5.1 Addenda are instruments issued by the City prior to the date for receipt of bids which modify or interpret the bidding document by addition, deletion, clarification or correction.
- 5.2 Addenda notification will be made available to all registered vendors immediately via e-mail for inspection on-line.
- 5.3 No addendums will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

**6. INDEPENDENT PRICE DETERMINATION**

- 6.1 By signing and submitting this bid, the Bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder prior to bid opening directly or indirectly to any other Bidder or to any competitor; no attempt has been made, or will be made, by the Bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

**7. ANTI-LOBBYING PROVISION**

- 7.1 During the period between the bid advertisement date and the contract award, Bidders, including their agents and representatives, shall not lobby or promote their bid with the Mayor, any member of the City Council, or City staff except in the course of City sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

**8. BRAND NAMES**

- 8.1 Wherever in the specifications or bid that brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 8.2 It is the Bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 8.3 Bids for alternate items shall be stated in the appropriate space on the e-bid form, or if the proposal form does not contain blanks for alternates, Bidder MUST attach to its bid document on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation.
- 8.4 The Bidder must indicate any variances by item number from the bidding document no matter how slight.
- 8.5 If variations are not stated in the bid, it will be assumed that the item being bid fully complies with the City's bidding documents.

**9. DEMONSTRATIONS/SAMPLES**

- 9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 9.2 Such demonstration can be at the City delivery location or a surrounding community.
- 9.3 If items are small and malleable, the Bidder is proposing an alternate product, the Bidder shall supply a sample of the exact item. Samples will be returned at Bidder's expense after receipt by the City of acceptable goods. The Bidder must indicate how samples are to be returned.

**10. DELIVERY (Non-Construction)**

- 10.1 Each Bidder shall state on the bid the date upon which it can make delivery of all equipment or merchandise.
- 10.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the bid.
- 10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. to the City at the location specified by the City, with all transportation charges paid.
- 10.4 At the time of delivery, a designated City of Lincoln employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

**11. WARRANTIES AND GUARANTEES**

- 11.1 Copies of the following documents shall accompany the bid proposal for all items being bid, if requested:
  - 11.1.1 Manufacturer's warranties and/or guarantees.
  - 11.1.2 Bidder's maintenance policies and associated costs.
- 11.2 Unless stated otherwise in the specifications, as a minimum requirement of the City, the Bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the Bidder shall be paid by the Bidder.

**12. ACCEPTANCE OF MATERIAL**

- 12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 12.2 Material delivered under this proposal shall remain the property of the Bidder until:
  - 12.2.1 A physical inspection and actual usage of the material is made and found to be acceptable to the City; and
  - 12.2.2 Material is determined to be in full compliance with the bidding documents and accepted bid.
- 12.3 In the event the delivered material is found to be defective or does not conform to the bidding documents and accepted bid, the City reserves the right to cancel the order upon written notice to the Bidder and return materials to the Bidder at Bidder's expense.
- 12.4 Awarded Bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the bidding documents or purchase orders.
- 12.5 Awarded Bidder's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

**13. BID EVALUATION AND AWARD**

- 13.1 The electronic signature shall be considered an offer on the part of the Bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each Bidder so agrees in submitting the bid.
- 13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 13.4 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to the City, and as the City deems will best serve the requirements and interests of the City.
- 13.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of the City.
- 13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by the City. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.
- 13.7 The City reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the bid incomplete, indefinite or ambiguous.
- 13.8 Any governmental agency may piggyback on any contract entered into from this bid.

**14. INDEMNIFICATION**

- 14.1 The Bidder shall indemnify and hold harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Bidder, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Bidder to indemnify or hold harmless the City of Lincoln for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- 14.2 In any and all claims against the City or any of its members, officers or employees by an employee of the Bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Bidder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**15. TERMS OF PAYMENT**

- 15.1 Unless stated otherwise, the City will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other materials have been delivered, and all such labor and equipment and other materials have met all contract specifications.

**16. LAWS**

- 16.1 The laws of the State of Nebraska shall govern the rights, obligations, and remedies of the parties under this bid and any contract reached as a result of this process.
- 16.2 Bidder agrees to abide by all applicable local, state and federal laws and regulations, including those concerning the handling and disclosure of private and confidential information from individuals and corporations as to inventions, copyrights, patents and patent rights.
- 16.3 If there are any conflicts or inconsistencies between the Bidder's documents and the City's, the City's documents shall control.

**17. EQUIPMENT TAX ASSESSMENT**

- 17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. In that regard, every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

**18. AFFIRMATIVE ACTION**

- 18.1 The City of Lincoln provides equal opportunity for all Bidders and encourages minority businesses, women's businesses and locally owned business enterprises to participate in our bidding process.

**19. LIVING WAGE**

- 19.1 The Bidder shall be responsible for determining whether it is subject to the Living Wage ordinance in the event it is awarded the contract.
- 19.2 If the contract is subject to the City Living Wage pursuant to Section 2.81 of the Lincoln Municipal Code, the Bidder agrees to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage. This wage is subject to change every July.

**20. INSURANCE**

- 20.1 All Bidders shall take special notice of the insurance provisions required for City contracts (see *Insurance Requirements for All City Contracts*).

**21. EXECUTION OF AGREEMENT**

- 21.1 Depending on the type of service or commodity provided, one of the following methods will be employed. The method applicable to this contract will be checked below:
- ☐ a. **PURCHASE ORDER**, unless otherwise noted.
1. This contract shall consist of a City of Lincoln Purchase Order.
2. A copy of the Bidder's bid response (or referenced bid number) attached and that the same, in all particulars, becomes the contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents.
- ☒ b. **CONTRACT**, unless otherwise noted.
1. City will furnish copies of a Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance (as required), surety bonds properly executed (as required), and Contract signed and dated.
2. The prepared documents shall be returned to the Purchasing Office within 10 days (unless otherwise noted).
3. The City will sign and date the Contract and prepare an Executive Order or Directorial Order for signature.
4. Upon approval and signature, the City will return one copy to the successful Bidder.

**22. TAXES AND TAX EXEMPTION CERTIFICATE**

- 22.1 The City is generally exempt from any taxes imposed by the state or federal government. A Tax Exemption Certificate will be provided as applicable.
- 22.2 Materials, supplies, labor & service used for the Water Division of the City of Lincoln are taxable per Reg. 066.14A and no exemption certificate will be issued.

**23. CITY AUDIT ADVISORY BOARD**

- 23.1 All parties of any City agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

**24. E-VERIFY**

- 24.1 In accordance with Neb. Rev. Stat. 4-108 through 4-114, the winning bidder agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The winning bidder shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The winning bidder shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to [www.uscis.gov/everify](http://www.uscis.gov/everify).